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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-507

MARGUERITE LEIPZIG, MAYOR OF THE CITY OF REDWOOD CITY, CALIFORNIA, and CHARLES GYSELBRECHT, BUILDING OFFICIAL OF THE CITY OF REDWOOD CITY, CALIFORNIA,
Petitioners,

vs.

ALAN L. BALDWIN and GEORGE Q. CANNON, JR.,
Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

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Subject Index

	Page
Clarification of statement of the case	2
Reasons for granting the writ	4
Conclusion	8

Table of Authorities Cited

Cases	Pages
Cameron v. Johnson (1968), 390 U.S. 611	5
Cox v. New Hampshire (1941), 312 U.S. 569	5
Kovacs v. Cooper (1949), 336 U.S. 77	4, 5
Lehman v. City of Shaker Heights (1974), 419 U.S. 298	5
Rowan v. U.S. Post Office (1970), 397 U.S. 728	5
Schneider v. New Jersey (1939), 308 U.S. 147	5, 6
U.S. v. O'Brien (1968), 391 U.S. 367	6
Village of Belle Terre v. Boraas (1974), 416 U.S. 1	5
Young v. American Mini Theatres (1976), — U.S. —, 96 S. Ct. 2440, 44 U.S.L.W. 4999	4, 5

Codes

Redwood City Code:	
Section 3.135	2, 4
Section 3.136	2

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Marguerite Leipzig, Mayor of the City of Redwood City, California, and Charles Gyselbrecht, Building Official of the City of Redwood City, California, reply to the brief in opposition to petition for a writ of certiorari filed herein by Respondents above named.

CLARIFICATION OF STATEMENT OF THE CASE

While the record will be before the Court in the event the petition is granted, and contentions of the parties with respect to the facts resolved by reference thereto, brief comment is necessary in view of certain assertions of Plaintiffs regarding the facts. The purpose of the Five Dollar ($5.00) deposit (R.C. Code §3.136) is to assure removal of temporary signs within ten days after the event advertised in accordance with Redwood City Code Section 3.135. The deposit is not subject to forfeiture, as Plaintiffs assert, for *any* violation of the provisions of the Code (Brief in Opposition, etc., p. 2). The sole and express purpose of the refundable deposit is to encourage the permittee to remove the sign.

The application form by which Plaintiffs profess to be so perplexed is, in an effort to reduce bureaucratic red tape, the same form required of all sign permittees. Plaintiffs assert that some applicants are required to provide greater information than others in filling out the application form (Brief in Opposition, etc., p. 4). However, the testimony of the Building Inspector on which Plaintiffs rely is to the effect that one particular item on the form not required to be filled out is, on occasion, voluntarily supplied by the applicant. The Inspector further testified that, for all practical purposes, the relevant information unknown to an applicant is filled out by the City staff. The Trial Court perceived the practical, as opposed to contrived, circumstances involved in obtaining a permit, compared the situation to the

average person inquiring for information from a tax assessor or some other city official, and recognized that the official will readily advise what information is, or is not, necessary for the temporary sign permit. Similarly, the Building Inspector testified that, as to any request for a sign permit made by mail, the applicant is advised by return mail transmitting the application that if the applicant has problems in filling out the form, the City will furnish assistance.

Both the Court of Appeals and Plaintiffs assert that "uncontradicted evidence" shows that the permit procedure was so difficult that it unduly burdened the use of political signs, relying upon conclusionary affidavits filed by Plaintiffs. In point of fact, the issue of the reasonableness of the permit system was tried before the Court, wherein Plaintiffs' only witness testified that he had never filled out the application form. The reasonableness of the system was established to the Court's satisfaction by testimony of Defendants' witnesses, the only and persuasive evidence on point. Moreover, in prior proceedings before the Trial Court, affidavits filed on behalf of Defendants did contradict the aforementioned affidavits of Plaintiffs.

As to Plaintiffs' assertion that the application form does not require a facsimile of the sign (Brief in Opposition, etc., p. 4), the Building Official, at trial, testified that such was unnecessary in that the location and dimensions of the sign provided adequate information. The Court, as trier of fact, and best

able to resolve such issues, found no difficulty in holding for Defendants on the point.

Plaintiffs, inexplicably, cite certain Redwood City Code sections which are not challenged.[1] For the most part, the non-challenged sections relate to remedies of the City with respect to signs which constitute immediate or imminent hazards. As with regulations pertaining to fire prevention, public health, and other areas of public welfare, the exercise of legislative authority is not so constrained as to prevent only immediate perils, but also may achieve goals less dramatic but nonetheless weighty (cf., *Young v. American Mini Theatres* [1976], ... U.S. ....., 96 S. Ct. 2440, 44 U.S.L.W. 4999; *Kovacs v. Cooper* [1949], 336 U.S. 77).

REASONS FOR GRANTING THE WRIT

It is difficult to understand Plaintiffs conclusion that the issues of law presented herein are not novel, while at the same time recognizing their importance (Brief in Opposition, etc., p. 6). The issues are both important and novel in that the permissible degree of regulation of the mode of expression involved herein as to time, place, and manner has not been before this Court. Use of political signs is commonplace. Absence of an amicus curiae brief in the Courts below reflects absence of knowledge of the case, not lack of interest in the subject matter.

[1]In doing so, Plaintiffs erroneously state the time period during which temporary signs may be maintained is 45 days. The correct period is 60 days (R.C. Code §3.135).

In true perspective, the case presents issues which are of increasing importance because of the urbanization of our country. What may have been an innocuous device in earlier days and in smaller communities has become less so as the ability to obtain relief from the pressures of urban living decreases. In short, the issues herein require resolution for the guidance of communities as the conduct of candidates and their supporters using political signs collides with municipal goals in furtherance of neighborhood preservation (*Young v. American Mini Theatres, Inc.,* supra; *Village of Belle Terre v. Boraas* [1974], 416 U.S. 1), tranquility (*Kovacs v. Cooper,* supra), privacy (*Rowan v. U.S. Post Office* [1970], 397 U.S. 728; *Lehman v. City of Shaker Heights* [1974], 419 U.S. 298), safety (*Cameron v. Johnson* [1968], 390 U.S. 611; *Cox v. New Hampshire* [1941], 312 U.S. 569), and other legitimate municipal goals.

The failure of the Court of Appeals in the case herein to focus upon the mode of communication has resulted in a rule not supported by authority. In relying upon *Schneider v. New Jersey* [1939], 308 U.S. 147, both the Court below and Plaintiffs ignore the factual distinctions between that case and the case herein. The *Schneider* rationale is not helpful because it does not involve either the type of regulation nor the mode of expression at issue herein. Three of the regulations invalidated in *Schneider* entirely prohibited the dissemination of expression by leaflets, and the remaining regulation allowed such dissemination under permit issued without ade-

quate standards. Here, total prohibition is not at issue, and issuance of the sign permits is ministerial upon compliance with specific, definite conditions and standards. The mode of expression in *Schneider,* leaflets, presented an entirely different type of problem for the municipality. There, the problem related to disturbance of residents by physical intrusion upon the domicile, and littering created by carelessness. Here, the intrusions in residental areas are visual but nonetheless abrasive and pervasive, and the littering problem is not created so much by carelessness as by the very nature of the mode of expression. The signs subject to Redwood City's regulations are those which, by definition, are left unattended and almost certainly destined to become litter.

The focus by both Plaintiffs and the Court of Appeals upon the content of the expression clouds the true subject of regulation. It is the conduct relating to the particular mode of communication which is regulated, not the content. Incidental limitations upon expression resulting from regulation of conduct are constitutionally permissible *(U.S. v. O'Brien* [1968], 391 U.S. 367, 391). The particular mode of communication — temporary signs — when combined with the conduct inherently related thereto creates the municipal problems sought to be relieved by the regulations. Candidates and their supporters compete with each other to erect as many political signs of as great a size, and in as many places, as possible. However erroneous the assumption may be, they apparently believe that quantity of signs indicates degree

of political support. Accordingly, absent regulation of the type herein contested a city and its residents are simply overwhelmed by the medium, if not the message.

In arguing that the Court of Appeals did nothing to deprive the City of its right reasonably to regulate the use of political signs (Brief in Opposition, etc., p. 9), Plaintiffs beg the question. In point of fact, the Court of Appeals did deprive the City of its right reasonably to regulate signs under the particular regulations at issue. Further, both the Plaintiffs' and the Court of Appeals' purported solutions create more problems than not. For example, Plaintiffs would provide for a single permit to be issued to a campaign committee. However, that "solution" makes no provision for an individual's status in erecting signs. Similarly, the Court of Appeals suggests ". . . it is not beyond the power of the City to impose design restrictions that would bar more unsightly posters . . ." (Petition, Appendix B, p. 22). That suggests that the City may regulate in such manner as to affect the contents of such signs, an area now unregulated by the City's ordinance, and heretofore thought not properly subject to regulation.

CONCLUSION

If, as Plaintiffs assert, political signs are a "traditional" medium of expression, the City's regulations are a legislative reflection of society's changes which preserve access to the tradition. The time is ripe for a definition of the degree of regulation which will strike a fair balance between expression and the legitimate municipal goals sought to be achieved by the regulations contested herein.

WHEREFORE, it is respectfully submitted that the petition herein should be granted.

Dated, Redwood City, California,
November 16, 1976.

Respectfully submitted,

DAVID E. SCHRICKER,
City Attorney,
Attorney for Petitioners.